

## **Description of Progress Payment Process**

This document is intended as a guide to cities, towns and regional school districts (hereinafter called Local Government Units or “LGU’s”) with a project on the Wait List that is currently under construction or will begin construction in the near future. This document generally describes the procedures the LGU should follow and by which the MSBA may disburse payment to the LGU for the projects on the Wait List that were previously approved by the Department of Education (DOE).

The MSBA will reimburse for eligible project expenses through a new system called “Progress Payments”. In general, on a monthly basis, project costs that have been incurred and approved by the LGU and Project Manager, and certified by the Architect when applicable, will be submitted to the MSBA on standard request for reimbursement forms. The MSBA will review properly submitted forms and reimburse the LGU for the amount approved within 15 days, less any adjustments made by the MSBA. The MSBA reserves the right to adjust any current or subsequent monthly Progress Payment to account for ineligible costs or other adjustments.

If an LGU has not started construction, or is at the early stages of construction they must follow the Progress Payment procedures outlined in this section. Any project beyond the early stages of construction is eligible for the Progress Payment system, and the MSBA encourages the LGU to contact us to discuss the transition to the Progress Payment system.

### **Checklist:**

1. Funding Letter
2. Project Manager Approval
3. Project Budget Review Conference
4. Project Funding Agreement
5. LGU issues Notice to Proceed to Contractor
6. Progress Payments
7. Project Closeout
8. Audit
9. Final Payment

### **Detailed Description of Checklist**

The following represents the milestones for approval of reimbursement for project costs and initiation of the Progress Payments with the MSBA.

1) Obtain letter from the MSBA confirming information about the Project

The LGU should contact the MSBA to obtain a letter confirming the approved scope, square footage, reimbursement rate, cost standards and the Maximum Allowable Cost for the project. The MSBA cannot approve changes in scope except those changes which had received prior written approval from the Board of Education or those changes in scope that result in a total grant amount equal to or less than the originally approved grant amount.

2) Obtain Project Manager Approval Letter

The MSBA must approve all Project Managers, even for those cities, towns and regional school districts that have already contracted the services of a Project Manager.

For approval of the Project Manager, the LGU must submit to the MSBA the following:

- a) Project Manager Qualification Statement (template provided by MSBA)
- b) Description of procurement process for Project Manager
- c) Executed contract with Project Manager and terms and conditions (LGUs that have not yet contracted with a PM may use template provided by MSBA)

MSBA will issue a written approval of a Project Manager *before* executing the Project Funding Agreement.

3) Project and Budget Review Conference

The objective of the Project and Budget Review Conference will be to present a summary of the project status, budget, and issues, and review the procedures contained herein prior to or upon execution of the Project Funding Agreement.

It is preferable that the following individual(s) attend the Project and Budget Review Conference

- ◆ LGU representative(s), which may include school superintendent and/or business official and/or School Building Committee chair or representative
- ◆ LGU CFO or Treasurer

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- ◆ Project Manager
- ◆ LGU Financial Advisor
- ◆ Project Architect

Prior to the Project and Budget Review Conference, the LGU must have submitted the following documentation to the MSBA, in a format acceptable to the MSBA:

- a) Educational Specifications, Schematic Plans and Drawings
- b) Summary of all current and projected short-term debt (BANS) and long-term debt issued by the LGU for the project.
- c) Evidence of fee-simple title of the site of the project
- d) Letter from the LGU's legal counsel certifying who has authority to enter into the Project Funding Agreement and who has legal authority to make decisions with respect to the project on behalf of the LGU.
- e) Certification of compliance with M.G.L. c. 268A, §1 et seq. from all architects, project managers, contractors, sub-contractors, and vendors, to the extent applicable.
- f) Updated Total Project Budget and cash flow projections through the life of the project (with detail for estimates of all costs including, but not necessarily limited to, legal, project management, construction, design, FF&E, etc.), in a format as required by the MSBA with a certification that (i) the Total Project Budget accurately sets forth all costs that the LGU anticipates incurring in connection with the project; (2) the MSBA shall have no liability for any costs in excess of the amount stated in the Project Funding Agreement; and (3) the LGU acknowledges that the amount stated in the Project Funding Agreement is the maximum amount available from the MSBA for the project.

4) Project Funding Agreement

As a condition of MSBA reimbursement for eligible project costs, the LGU and the MSBA must execute a Project Funding Agreement (MSBA Document).

Prior to executing the Project Funding Agreement, the LGU must:

- a) Review terms & conditions of the Project Funding Agreement
- b) Execute contract with Architect and provide the MSBA with a summary of the selection process utilized in procuring these services
- c) Present a cash flow projection to the MSBA (template provided by the MSBA)
- d) Review payment schedule between the MSBA and LGU

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- e) Certify to the MSBA certain elements relative to Project Costs (see MSBA Document Project Funding Agreement, Exhibit B)

The person executing the Project Funding Agreement shall be a “Duly Authorized City or Town representative” and depending on the LGU’s by-laws or votes taken by the LGU it may be one of the following:

- ◆ City Mayor or her designee
- ◆ Chairman of the Board of Selectmen or their designee

The LGU must present the Authority with a copy of the by-laws, vote, or other document authorizing the individual to sign the Project Funding Agreement on behalf of the city, town or regional school district.

The LGU also must provide the Authority with written documentation evidencing indemnification of the MSBA by the Architect, Contractor, Project Manager, and Vendors.

5) LGU issues Notice to Proceed to General Contractor

At least 10 business days prior to issuing the Notice to Proceed, the LGU and Project Manager must submit to the MSBA:

- a) Evidence of insurance as required by law
- b) Certification that each of the Architect, Contractor, and Project Manager (1) meet all of the applicable requirements of M.G.L. c. 7, § 38A ½; c. 30; c. 70B; c. 149; chapter 193 of the acts of 2004, and all other applicable provisions of federal, state and local law and (2) has all of the requisite authority to engage in the project
- c) Pre-qualification of Contractors and Subcontractors
- d) Bid tabulation for General bidders and filed sub-bidders
- e) Copies of all Construction Contract Documents, as defined in the Project Funding Agreement
- f) Copy of Executed Contract (with copies of Performance and Payment Bonds)
- g) A copy of the executed Notice to Proceed
- h) Performance Bonds from General Contractor

6) Progress Payments

The Project Funding Agreements sets forth the terms and conditions that must be met to receive reimbursement from the MSBA on a progress payment basis. The following is a list of many of the documents that the LGU must submit to the MSBA to receive reimbursement for eligible approved project costs.

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The Project Manager should compile, review and submit the following documentation to the MSBA on a monthly basis, by the day of the month stated in the Project Funding Agreement:

- a) LGU Request and Certificate for Payment and Continuation Sheet (MSBA template provided)
- b) Project Manager Request for Reimbursement (MSBA template provided)
- c) Architect Request for Reimbursement (MSBA template provided)
- d) Contractor Application for Reimbursement and Continuation Sheet (MSBA template provided), with certification and original signatures as approved by the LGU and certified by the Architect
  - i) Copy of the original Schedule of Values (budget) for the construction work as approved by an executed contract
  - ii) Copy of all Construction Change Orders and Contract Amendments (itemized separately)
- e) Copy of all other invoices paid to date and approved by the Duly Authorized City/Town official, including FF&E invoices
- f) Project Status report (prepared monthly by Project Manager). This report shall include:
  - i) Updated Total Project Budget
  - ii) Updated Cash Flow (quarterly)
  - iii) Construction Schedule
  - iv) All sources and amounts of funding
  - v) Change Orders (cost and time), Contract Amendments, and Contract Extensions
  - vi) List of Proposed Change Orders (Potential Change Order Log)
  - vii) Cost Overruns Report. Identify how any cost overruns will be handled (i.e., use of contingency, budget transfers, other sources of funding, value engineering or scope reduction)
  - viii) Certification that all necessary project permits have been obtained
- g) LGU shall certify to the MSBA that all Architects, contractors, and all other persons providing labor, services or materials with whom the LGU has a direct contractual relationship have been fully paid for the services in the current request.

7) Project Closeout

LGU must obtain and submit the following:

- a) Certificate of Substantial Completion from General Contractor

LGU should obtain and keep the following information in the project file

- b) Punchlist

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- c) Project Correspondence
- d) Approved Shop Drawings and O&M Manuals
- e) Building Permits
- f) Inspection certificates
- g) HVAC Testing and Balancing reports
- h) Commissioning reports
- i) Occupancy permit

8) Audit

The LGU shall at all times maintain a project file. Prior submission of any document to the MSBA shall not constitute relief of the requirement for the LGU to maintain such documents. Originals of the following documentation shall constitute the Audit File:

- a) All Construction Specifications, Plans and Drawings, including all addenda
- b) Bid documentation and bid tabulation information
- c) All executed contracts (Contractor, Architect, PM, Subcontractors)
- d) All executed Change Orders
- e) All executed Purchase Orders. Documentation closing any open Purchase Orders
- f) All vendor invoices
- g) All LGU requests for Payments, and associated back-up (Contractor, A/E, PM and other requests for payments).

9) Final Payment

To request final payment from the MSBA, including release of retainage, the LGU must submit the following documentation to the MSBA:

- a) LGU Certificate of Project Completion and Final Request for Payment
- b) Copy of cost reconciliation including if any, liquidated damages, early completion bonuses, etc.
- c) Certification by LGU that there are no pending payments or liabilities relative to the project approved by the MSBA

After receiving the above documents and after the MSBA's approval of the final close-out audit, the MSBA will send the LGU a Disbursement Completion Certificate and make a final payment.

The Authority will not recognize a cost as eligible if incurred after the date of the LGU Final Request for Payment.